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8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2011-44

12 **A C C U S A T I O N**

13 **LINDA T. KAPPES**
14 **AKA LINDA KAY THROCKMORTON**
P.O. Box 1281
15 Soquel, California 95073
Registered Nurse License No. RN 198018

16 Respondent.

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18 **Complainant alleges:**

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
22 of Consumer Affairs.

23 2. On or about May 31, 1969, the Board of Registered Nursing issued Registered Nurse
24 License Number RN 198018 to Linda T. Kappes (Respondent). The Registered Nurse License
25 was in full force and effect at all times relevant to the charges brought here and will expire on
26 August 23, 2010, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2644 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY/REGULATORY PROVISIONS

6. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

....

"(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof."

7. Section 2762 of the Code states:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

...

"(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as

1 defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or
2 injurious to himself or herself, any other person, or the public or to the extent that such use
3 impairs his or her ability to conduct with safety to the public the practice authorized by his or her
4 license.

5 "(c) Be convicted of a criminal offense involving the prescription, consumption, or
6 self-administration of any of the substances described in subdivisions (a) and (b) of this section,
7 or the possession of, or falsification of a record pertaining to, the substances described in
8 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence
9 thereof."

10 8. California Code of Regulations, title 16, section 1444, states:

11 "A conviction or act shall be considered to be substantially related to the
12 qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the
13 present or potential unfitness of a registered nurse to practice in a manner consistent with the
14 public health, safety, or welfare. Such convictions or acts shall include but not be limited to the
15 following:

16 "(a) Assaultive or abusive conduct including, but not limited to, those violations
17 listed in subdivision (d) of Penal Code Section 11160.

18 "(b) Failure to comply with any mandatory reporting requirements.

19 "(c) Theft, dishonesty, fraud, or deceit.

20 "(d) Any conviction or act subject to an order of registration pursuant to Section 290
21 of the Penal Code."

22 9. Section 490 of the Code provides, in pertinent part, that a board may suspend or
23 revoke a license on the ground that the licensee has been convicted of a crime substantially
24 related to the qualifications, functions, or duties of the business or profession for which the
25 license was issued.

26 COST RECOVERY

27 10. Section 125.3 of the Code provides, in pertinent part, that the
28 Board/Registrar/Director may request the administrative law judge to direct a licensee found to

1 have committed a violation or violations of the licensing act to pay a sum not to exceed the
2 reasonable costs of the investigation and enforcement of the case.

3 FIRST CAUSE FOR DISCIPLINE
4 (Conviction – March 18, 2002 Arrest)
5 (Bus. & Prof. Code §§2761(f), 2762(c))

6 11. Respondent has subjected her license to disciplinary action under Code sections 490,
7 2761(f), and 2762(c) in that on or about April 25, 2002, in a criminal proceeding entitled *The*
8 *People of the State of California v. Linda Throckmorton Kappes*, in the San Mateo Superior
9 Court, Case Number SM318013, Respondent was convicted by a plea of guilty to one count of
10 violating Vehicle Code section 23152(b) (driving while under the influence of alcohol), a
11 misdemeanor and a plea of guilty to one count of violating Vehicle Code section 12951(a)
12 (driving without a license), an infraction. Respondent was sentenced to 48 hours in the San
13 Mateo County Jail and three (3) years court-ordered probation, ordered to enroll and complete the
14 San Mateo County First Offender Program and the San Mateo County Sheriff's Work Program,
15 granted a restricted use of her driver's license, and ordered to pay restitution in the amount of
16 \$1301.00.

17 SECOND CAUSE FOR DISCIPLINE
18 (Unprofessional Conduct – June 24, 2002 Arrest)
19 (Bus. & Prof. Code §§2761(a), 2762(b))

20 12. Respondent has subjected her license to disciplinary action for unprofessional
21 conduct under sections 2761(a) and 2762(b), in that on or about June 24, 2002, she was arrested
22 for domestic violence. The circumstances are as follows:

23 13. On June 24, 2002, Santa Clara County Sheriff's Deputies were dispatched to
24 Respondent's residence on Vanderbilt Drive in Saratoga, California, on a report of a family
25 disturbance. When the deputies arrived, they first spoke with Respondent's husband, R.K., who
26 told the officers that he had arrived home from work to find Respondent and her friend in the
27 house. R.K. had asked the friend to leave and Respondent began to yell at him. When R.K. went
28 to his bedroom, Respondent followed him and pulled the receiver for the phone, ripping the
phone cord in half. Respondent also slid the computer monitor off the side of the desk. R.K. then

1 left the bedroom and went into the living room. Respondent followed R.K. and tried to punch
2 him, but he moved out of the way. Respondent then kicked R.K. in his left leg with her right foot.
3 R. K. told officers that his son witnessed these events. The deputies took a statement from
4 Respondent's son, G.K., who stated that he awoke to find respondent yelling at R.K. When G.K.
5 left his room, he witnessed Respondent trying to punch R.K. and saw Respondent kick R.K. in his
6 leg.

7 14. After speaking with Respondent, the deputies determined that she was the primary
8 aggressor. Respondent was placed under arrest and put in handcuffs. After her arrest,
9 Respondent began to yell at and struggle with the deputies. When they arrived to the police car,
10 Respondent refused to get into the car, using her legs to wrap around one of the deputies. Once
11 the deputies were able to get her into the car, Respondent used her head, back, and legs against
12 the door, not allowing the deputies to close it. The deputies then transported Respondent to the
13 West-Valley substation for booking.

14 THIRD CAUSE FOR DISCIPLINE
15 (Conviction – June 24, 2002 Arrest)
16 (Bus. & Prof. Code §§2761(f), 2762(c))

17 15. Complainant realleges the allegations contained in paragraphs 12 - 14 above, and
18 incorporates them here by reference as if fully set forth.

19 16. Respondent has subjected her license to disciplinary action under Code sections 490,
20 2761(f), and 2762(c) in that on or about November 5, 2002, in a criminal proceeding entitled *The*
21 *People of the State of California v. Linda Throckmorton Kappes*, in the Santa Clara Superior
22 Court, Case Number CC253043, Respondent was convicted by a plea of nolo contendere to one
23 count of violating Penal Code section 148(a)(1) (resisting, delaying, obstructing an officer), a
24 misdemeanor. Respondent was sentenced to 35 days in the Santa Clara County Jail, ordered to
25 enroll in an alcohol and domestic violence program, ordered to do 20 hours of volunteer work,
26 and ordered to pay approximately \$700.00 in court-ordered restitution.

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FOURTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct – October 13, 2002 Arrest)
(Bus. & Prof. Code §§2761(a), 2762(b))

17. Respondent has subjected her license to disciplinary action for unprofessional conduct under sections 2761(a) and 2762(b), in that on or about October 13, 2002, she was arrested for violating a court order to prevent domestic violence. The circumstances are as follows:

18. On October 13, 2002, Santa Clara County Sheriff's deputies responded to an emergency "911" call regarding a domestic dispute at Respondent's residence on Vanderbilt Drive in Saratoga, California. When the deputies arrived, they could hear arguing coming from inside Respondent's home. The deputies began to interview Respondent's husband, R.K., who told them that Respondent was an alcoholic and had been drinking earlier that evening. R.K. told the deputies that he and Respondent were in the process of divorce, but both lived at the residence on Vanderbilt, in separate bedrooms. R.K. informed the deputies that there was a court order on file instructing Respondent to have peaceful contact with R.K. R.K. told the deputies that Respondent had walked over to his bedroom, began to kick the door, and scream at him. R.K. told Respondent to leave him alone and reminded her of the "peaceful contact" order. Respondent then threatened to harm R.K. if he called the police. Respondent's son, G.K., was a witness to these events. The deputies interviewed G.K. and he told the deputies that his mother had been drinking earlier in the evening and she started a verbal altercation with R.K. The deputies asked G.K. if Respondent had been peaceful during her contact with R.K. and G.K. stated, "No." He told the deputies that he witnessed Respondent yelling and kicking at R.K.'s bedroom door.

19. The deputies spoke with Respondent who admitted violating the "peaceable contact" order and said she "would do it again." The deputies observed that Respondent had difficulty walking, had slurred speech, and emitted a strong odor of an alcoholic beverage from her person. The deputies placed Respondent under arrest for admitting to intentionally violating her court order and for her public drunkenness.

FIFTH CAUSE FOR DISCIPLINE
(Conviction - October 13, 2002 Arrest)
(Bus. & Prof. Code §§2761(f), 2762(c))

20. Complainant realleges the allegations contained in paragraphs 17 - 19 above, and incorporates them here by reference as if fully set forth.

21. Respondent has subjected her license to disciplinary action under Code sections 490, 2761(f), and 2762(c) in that on or about November 5, 2002, in a criminal proceeding entitled *The People of the State of California v. Linda Throckmorton Kappes*, in the Santa Clara County Superior Court, Case Number CC264735, Respondent was convicted by a plea of nolo contendere to one count of violating Penal Code section 273.6(a) (violation of protective order), a misdemeanor. Respondent was sentenced to 35 days in the Santa Clara County Jail and ordered to enroll in an alcohol and domestic violence program.

SIXTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct – December 7, 2002 Arrest)
(Bus. & Prof. Code §§2761(a), 2762(b))

22. Respondent has subjected her license to disciplinary action for unprofessional conduct under sections 2761(a) and 2762(b), in that on or about December 7, 2002, she was arrested on domestic violence charges. The circumstances are as follows:

23. On December 7, 2002, Santa Clara County Sheriff's deputies responded to a family disturbance call at Respondent's residence on Vanderbilt Drive in Saratoga. When the deputies arrived on the scene they found Victim R.K. on the front lawn of the house. R.K. told the deputies that he and Respondent were getting a divorce and he was at the home packing his belongings, as the escrow was about to close on their home. As he was packing his belongings, Respondent began to yell and throw things at him. R.K. told the deputies that Respondent slapped him across his face with her open hand, picked up a mirror tile and went after R.K., lifting the mirror above her head with both arms and breaking it over R.K.'s shoulder. R.K. then called "911" and Respondent locked herself in her bedroom.

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1 24. While speaking with Respondent and getting her statement of events, the deputies
2 smelled the odor of an alcoholic beverage on Respondent's breath and noticed that Respondent
3 could not focus on the deputies' questions. The deputies then placed Respondent under arrest,
4 transported her to the Santa Clara County Jail, and booked her on charges of domestic violence.

5 SEVENTH CAUSE FOR DISCIPLINE
6 **(Conviction – December 7, 2002 Arrest)**
7 **(Bus. & Prof. Code §§2761(f), 2762(c))**

8 25. Complainant realleges the allegations contained in paragraphs 22 - 24 above, and
9 incorporates them here by reference as if fully set forth.

10 26. Respondent has subjected her license to disciplinary action under Code sections 490,
11 2761(f), and 2762(c) in that on or about January 2, 2003, in a criminal proceeding entitled *The*
12 *People of the State of California v. Linda Throckmorton Kappes*, in the Santa Clara County
13 Superior Court, Case Number CC269891, Respondent was convicted by a plea of nolo contendere
14 to one count of violating Penal Code section 273.5 (inflicting corporal injury on a spouse) and
15 one count of violating Penal Code section 242-243(e) (battery on spouse), both misdemeanors.
16 Respondent was sentenced to 60 days in the Santa Clara County Jail and three (3) years court-
17 ordered probation, ordered to enroll in, and complete, an alcohol and domestic violence program,
18 ordered to attend Alcoholic Anonymous meetings, ordered to do 20 hours of volunteer work, and
19 ordered to pay approximately \$300.00 in court-ordered restitution.

20 EIGHTH CAUSE FOR DISCIPLINE
21 **(Unprofessional Conduct – October 4, 2003 Arrest)**
22 **(Bus. & Prof. Code §§2761(a), 2762(b))**

23 27. Respondent has subjected her license to disciplinary action for unprofessional
24 conduct under sections 2761(a) and 2762(b), in that on or about October 4, 2003, she was arrested
25 for petty theft. The circumstances are as follows:

26 28. On October 4, 2003, police officers responded to the Safeway grocery store on San
27 Carlos Street in San Jose on a report of petty theft. When the officers arrived, they spoke with a
28 Loss Prevention Agent who stated that he had observed Respondent placing groceries in her black

1 back-pack without paying for them. Respondent was stopped outside of the store by the Loss
2 Prevention Agent and the police were called. The officers conducted a record check on
3 Respondent which revealed that she five outstanding warrants. The officers observed an open
4 wound to Respondent's right heel which required hospitalization. Respondent was transported
5 and admitted into the Santa Clara Valley Medical Center and the officers paper-booked her into
6 the Santa Clara County Jail.

7 NINTH CAUSE FOR DISCIPLINE
8 (Conviction – October 4, 2003 Arrest)
9 (Bus. & Prof. Code §§2761(f), 2762(c))

10 29. Complainant realleges the allegations contained in paragraphs 27 and 28 above, and
11 incorporates them here by reference as if fully set forth.

12 30. Respondent has subjected her license to disciplinary action under Code sections 490,
13 2761(f), and 2762(c) in that on or about October 27, 2003, in a criminal proceeding entitled *The*
14 *People of the State of California v. Linda Throckmorton Kappes*, in the Santa Clara County
15 Superior Court, Case Number CC328781, Respondent was convicted by a plea of guilty to one
16 count of violating Penal Code section 484 (petty theft), a misdemeanor. Respondent was
17 sentenced to one (1) year of court-ordered probation and ordered to pay approximately \$290.00 in
18 court-ordered restitution.

19 TENTH CAUSE FOR DISCIPLINE
20 (Unprofessional Conduct – August 22, 2005 Arrest)
21 (Bus. & Prof. Code §§2761(a), 2762(b))

22 31. Respondent has subjected her license to disciplinary action for unprofessional
23 conduct under sections 2761(a) and 2762(b), in that on or about August 22, 2005, she was
24 arrested on domestic violence charges and for trespassing. The circumstances are as follows:

25 32. On August 22, 2005, San Jose Police Officers responded to a report of a family
26 disturbance at a residence on Almaden Avenue in San Jose. When the officers arrived, they
27 conducted a search of the home and found Respondent inside. Respondent did not live at the
28 residence. She was visiting. While the police attempted to arrest the person who occupied the

1 home, Respondent stood up and became argumentative with the officers. When the officers
2 instructed Respondent to sit down and stay seated, Respondent refused. She stood up multiple
3 times and the arresting officer had to physically restrain Respondent to sit down. The suspect
4 being arrested stated to the officers that she did not want Respondent to stay at her residence.
5 When the officers asked Respondent to leave, she refused. For officer safety, a bottle of alcohol
6 was taken from Respondent's belongings. Respondent refused to leave without the alcoholic
7 beverage. Respondent lunged at the officer and grabbed the bottle from him. The officers placed
8 Respondent under arrest, transported her to the Main Jail, and booked her on charges of
9 trespassing and obstructing an officer.

10 ELEVENTH CAUSE FOR DISCIPLINE

11 **(Conviction – August 22, 2005 Arrest)**

12 **(Bus. & Prof. Code §§2761(f), 2762(c))**

13 33. Respondent has subjected her license to disciplinary action under Code sections 490,
14 2761(f), and 2762(c) in that on or about December 14, 2005, in a criminal proceeding entitled *The*
15 *People of the State of California v. Linda Throckmorton Kappes*, in the Santa Clara County
16 Superior Court, Case Number CC506395, Respondent was convicted by a plea of nolo contendere
17 to one count of violating Penal Code section 148(a)(1) (resisting an officer) and one count of
18 violating Penal Code section 602(c) (trespassing), both misdemeanors. Respondent was
19 sentenced to two (2) years of court-ordered probation, ordered to enroll in and complete the San
20 Mateo County Sheriff's Alternative Sentencing Bureau Program, and ordered to pay
21 approximately \$442.50 in court-ordered restitution.

22 DISCIPLINARY CONSIDERATIONS

23 **(April 23, 2002, October 11, 2002, and May 15, 2003 Arrests)**

24 **(Bus. & Prof. Code §§2761(a) and (f), 2762(b) and (c))**

25 34. Respondent has subjected her license to disciplinary action for unprofessional
26 conduct under sections 2761(a) and 2762(b); in that on or about April 23, 2002, Respondent
27 was cited for violating Vehicle Code section 14601.1 (driving with a suspended or revoked
28 license) and 14601.5(a) (driving with a suspended or revoked license). Respondent was

1 sentenced to one (1) year of court-ordered probation and ordered to pay approximately \$100.00 in
2 court-ordered fines.

3 35. Respondent has subjected her license to disciplinary action for unprofessional
4 conduct under sections 2761(a) and 2762(b), in that in or about October 11, 2002, Respondent
5 was cited for violating Vehicle Code section 14601.5 (driving with a suspended or revoked
6 license and 16028(a). Respondent was sentenced to three (3) years of court-ordered probation
7 and ordered to pay approximately \$200.00 in court-ordered fines.

8 36. Respondent has subjected her license to disciplinary action for unprofessional
9 conduct under sections 2761(a) and 2762(b), in that or in or about May 15, 2003, Respondent was
10 arrested for violating cited for violating Vehicle Code section 21456(b) (jaywalking).
11 Respondent was sentenced to one (1) day in Santa Clara County Jail and ordered to pay
12 approximately \$200.00 in court-ordered fines.

13 PRAYER

14 WHEREFORE, Complainant requests that a hearing be held on the matters alleged here,
15 and that following the hearing, the Board of Registered Nursing issue a decision:

16 1. Revoking or suspending Registered Nurse License Number RN 198018, issued to
17 Linda T. Kappes;

18 2. Ordering Linda T. Kappes to pay the Board of Registered Nursing the reasonable
19 costs of the investigation and enforcement of this case, pursuant to Business and Professions
20 Code section 125.3;

21 3. Taking such other and further action as deemed necessary and proper.

22 DATED: 7/15/10

23 *Louise R. Bailey*
24 LOUISE R. BAILEY, M.ED., RN
25 Interim Executive Officer
26 Board of Registered Nursing
27 Department of Consumer Affairs
28 State of California
Complainant

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